

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

IN THE MATTER OF:

Complainant,

H&M INTERNATIONAL
TRANSPORTATION,

Respondent.

Judge Reva S. Bauch

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his race (Black) when Respondent sent Complainant home from work on August 21, 2004, for that day because he was tardy.

3. Complainant continues to be employed by Respondent.

4. Complainant does not contest that he was tardy on August 21, 2004.

5. On June 7, 2007, an initial status hearing was convened, with both parties represented by counsel.

6. Respondent's counsel informed me that this case involved nominal damages of possibly one day's lost wages, if Complainant prevailed on liability.

7. I instructed the parties to engage in settlement discussions. The matter was set for a status hearing on July 5, 2007.

8. At the July 5, 2007 status hearing, Respondent's counsel appeared, but neither Complainant nor Complainant's counsel appeared.

9. On July 5, 2007, a discovery order was entered, requiring the parties to propound written discovery no later than July 26, 2007.

10. In July 2007, Respondent propounded its written discovery, but Complainant did not.

11. Complainant failed to timely respond to Respondent's written discovery as required in the Commission's procedural rules.

12. Complainant ignored Respondent's September 13, 2007 correspondence to him, inquiring about the status of said discovery responses.

13. On September 19, 2007, both Respondent and Complainant's counsel appeared for a status hearing.

14. When I asked Complainant's counsel to explain why no responses to Respondent's written discovery had been filed, no explanation was given to me.

15. A September 19, 2007 Order was entered requiring Complainant to answer Respondent's outstanding discovery on or before September 21, 2007, and to propound Complainant's written discovery no later than September 21, 2007.

16. Complainant failed to comply with my September 19, 2007 Order.
17. On October 7, 2007, sixteen days after the deadline in my September 19, 2007 Order, Complainant provided answers to Respondent's interrogatories.
18. Complainant never provided any responses to Respondent's Request for Production of Documents.
19. On October 7, 2007, sixteen days after the deadline in my order of September 19, 2007, Complainant propounded discovery on Respondent.
20. Complainant's discovery requests included requests entirely outside the scope of the single issue of alleged disparate treatment posed by Complainant in his Complaint.
21. On October 22, 2007, Respondent filed a Motion to Dismiss or, Alternatively, to Strike Complainant's Untimely Written Discovery for Violation of the September 19, 2007 Order.
22. Respondent's Motion to Dismiss and Strike was fully briefed by both parties.
23. On January 16, 2008, I entered an Order granting Respondent's Motion, in part, and denying it, in part.
24. The January 16, 2008 Order barred Complainant from using any documents during the public hearing that were not timely produced to Respondent on or before September 21, 2007.
25. The January 16, 2008 Order barring Complainant from introducing documentary evidence at the public hearing was based on Complainant's failure to timely produce any documents in response to Respondent's discovery request as of the date of the Order, as well as Complainant's lack of personal knowledge about Respondent's alleged dissimilar treatment of alleged similarly-situated employees.
26. The January 16, 2008 Order also ordered that the parties submit a few dates for a settlement conference to the Commission's Clerk by January 23, 2008.
27. On April 1, 2008, Judge Gertrude McCarthy presided over a settlement conference at the Commission's Chicago Office.
28. A subsequent settlement conference took place, via telephone, on April 21, 2008.

29. On May 13, 2008, Judge McCarthy entered an Order indicating that the matter had not settled and that the parties were directed to continue discussions informally.

30. On June 18, 2008, Complainant's counsel informed me that he planned to file a Motion to Withdraw and a new status hearing date was set for August 7, 2008.

31. On August 7, 2008, I entered an Order granting the Motion to Withdraw and granting Attorney Rima Kapitan leave to file her appearance, *instante*.

32. The August 7, 2008 Order set a briefing schedule for a Joint Pre-hearing Memorandum.

33. Despite efforts of his new counsel, Complainant himself failed to participate in the preparation of the Joint Pre-hearing Memorandum.

34. The Joint Pre-hearing Memorandum failed to indicate any witnesses, apart from Complainant himself, who would testify in support of Complainant's case.

35. At the December 4, 2008 status hearing, Respondent's counsel reported that Complainant had expressed an interest in settling the case and that discussions had resumed.

36. In or around December 2008, the parties began negotiating the terms of a Release and Settlement Agreement.

37. On December 17, 2008, counsel for the parties requested that the Commission vacate any hearing dates and set the matter for a status on settlement for January 8, 2009.

38. I continued the matter several more times, including January 8, 2009, February 18, 2009, and April 9, 2009 to determine the status on settlement.

39. At both the February 18, 2009 and April 9, 2009 status hearings, Complainant's counsel reported that her client was not responding to her inquiries and she had no information to report to Respondent's counsel or to me.

40. On April 15, 2009, Respondent filed a Motion to Dismiss Action with Prejudice.

41. On April 22, 2009, I entered an Order setting a briefing schedule on Respondent's Motion to Dismiss.

42. To date, Complainant has failed to file a response to the Respondent's Motion to Dismiss.

CONCLUSIONS OF LAW

1. A complaint may be dismissed when a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance or unreasonably refuses to comply with a Commission Order or otherwise engages in conduct which unreasonably delays or protracts proceedings.

2. Complainant has failed to: (a) comply with discovery rules; (b) comply with Commission Orders; and (c) file a response to this Motion. The appropriate sanction is dismissal of the Complaint, and the underlying charge, with prejudice.

DISCUSSION

Under Commission Procedural Rules, an Administrative Law Judge may recommend to the Commission that a complaint be dismissed where a party fails to appear at a scheduled status hearing, unreasonably refuses to comply with a Commission Order or otherwise engages in conduct which unreasonably delays or protracts proceedings. **See 56 Ill. Admin. Code §5300.750(e).**

Complainant has taken absolutely no action to meaningfully prosecute this case since its inception. He never responded to document discovery requests, resulting in the January 16, 2008 barring order. He never meaningfully participated in the preparation of the Joint Pre-Hearing Memorandum, failing to identify any witnesses (beside himself) that would testify in support of his claim. He failed to cooperate with his attorney to negotiate and execute a settlement agreement. He has failed to respond to all inquiries from his attorney to get this matter resolved. It appears that Complainant has simply abandoned his claim in this case. As such, it is appropriate to dismiss her Complaint, with prejudice. **Bulmer v. Teng & Associates, Inc., IHRC 05-419, May 15, 2006. See also Williams v. SBC Ameritech, IHRC, 05-455, Dec. 11, 2006.**

In addition, Complainant has not filed any response to the Motion. The Commission has held that a dispositive motion should be granted where it appears on its face to be valid and the Complainant has failed to file a response. **Jones and Burlington Northern Railroad, 25 Ill. HRC. 101 (1986).**

RECOMMENDATION

I recommend the Commission dismiss the Complaint, and the underlying charge, with prejudice.

HUMAN RIGHTS COMMISSION

**BY: _____
REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: JUNE 11, 2009